

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

April 30, 2009

No. 08-60444
Conference Calendar

Charles R. Fulbruge III
Clerk

DONALD MCARTHUR JONES

Plaintiff-Appellant

v.

JEAN KIRKWOOD; RONALD KING; CHRISTOPHER B EPPS,
COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 2:06-CV-109

Before JONES, Chief Judge, and JOLLY and ELROD, Circuit Judges.

PER CURIAM:*

Donald McArthur Jones, former Mississippi prisoner # K3202, has filed a motion for leave to proceed in forma pauperis (IFP) on appeal from the dismissal of his 42 U.S.C. § 1983 complaint. By moving for IFP, Jones is challenging the district court's certification that his appeal was not taken in good faith. *See*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). This court's inquiry into Jones's good faith "is limited to whether the appeal involves 'legal points arguable on their merits (and therefore not frivolous).'" *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (citation omitted).

Because Jones's brief does not address the reasons for the district court's certification decision or the basis of the district court's dismissal, it is the same as if he had not appealed the judgment. *See Brinkmann v. Dallas County Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). Jones has not demonstrated that he will raise a nonfrivolous issue on appeal. *See Howard*, 707 F.2d at 219-20. Accordingly, Jones's motion to proceed IFP is denied. *See Baugh*, 117 F.3d at 202 n.24. Because his appeal is frivolous, *see Howard*, 707 F.2d at 219-20, his appeal is dismissed. *See 5TH CIR. R. 42.2*. Jones's motion for preparation of the transcript at government expense is denied. *See 28 U.S.C. § 753(f); Harvey v. Andrist*, 754 F.2d 569, 571 (5th Cir. 1985).

The dismissal of this appeal as frivolous counts as a strike for purposes of 28 U.S.C. § 1915(g). *See Adepegba v. Hammons*, 103 F.3d 383, 387-88 (5th Cir. 1996). Jones has one prior strike. *See Jones v. Smith*, 234 F. App'x 249, 250 (5th Cir. 2007). We caution Jones that once he accumulates three strikes, he may not proceed IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he "is under imminent danger of serious physical injury." § 1915(g).

MOTIONS DENIED; APPEAL DISMISSED; SANCTION WARNING ISSUED.